

## **REMARKS**

### **Status of the claims**

Claims 4, 7, 9, 11, 13-15, 17, 19, 20, 22-35 and 37-42 will be pending upon entry of this Amendment and Response to Office Action. Claims 25-30, 32-34, and 41-42 remain withdrawn. Claims 4, 35, and 38 have been indicated as allowable in the Office Action dated July 16, 2009. Claims 39 and 40 have been amended. No new matter has been added by these amendments.

Support for the amendments to claims 39 and 40 can be found at least in the claims as originally filed and paragraphs [0069], [0074] - [0078], [0080], [0099], [00102], [00103], [00105], [00110] – [00113], [00127], [00128] – [00130], and Examples 1-9.

### **Rejection under 35 U.S.C. § 112**

Claims 39 and 40 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. Specifically, the Office has maintained its rejection of claims 39 and 40 as being indefinite because the claims lack an essential step in the process.

Applicant has amended claims 39 and 40 as suggested by the Office to include the steps of measuring and analyzing the FRET and/or BRET signal.

Accordingly, Applicant respectfully requests withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

### **Obviousness Type Double Patenting**

Claims 4 and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 45-46 of co-pending application 10/914,049.

According to MPEP § 804 Part I.B.1., “if a ‘provisional’ nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of the two pending

applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.”

Applicant submits that the instant application is the earlier filed application. Specifically, the instant application was filed on February 4, 2004, whereas co-pending application 10/914,049 was filed on August 7, 2004.

Applicant believes the amendments and remarks discussed above have overcome the § 112 rejections. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 4 and 35 of the instant application based on the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 45-46 of co-pending application 10/914,049.

#### **Claim Objections**

Claims 7, 9, 11, 13-15, 17, 19, 20, 22-24 and 38 are objected to as being dependent from a rejected claim. Applicant respectfully submits that the objections are moot in view of the comments above with respect to claims 4 and 35.

**CONCLUSION**

In view of the foregoing amendment and remarks, all the claims in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully requested. The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 01-2384 in the name of ARMSTRONG TEASDALE LLP.

Respectfully submitted,

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